

(2015) 03 BOM CK 0196

In the Bombay High Court

Case No : Writ Petition Nos. 10254 of 2013 and 493 of 2014

Yogesh and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 03 BOM CK 0196

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : C.K. Shinde, for the Appellant; S.K. Kadam, Additional Government Pleader, Advocates for the Respondent

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the parties.

2. Writ Petition No. 493 of 2014 is filed with following prayer:--

"B. By issue of writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondents No. 1 and 2 may kindly be directed to take appropriate steps including penal/coercive action against the respondent No. 3 for failure to comply the order/directions issued by the respondent No. 2 vide his office communication dated 9/12.12.2013."

3. Writ Petition No. 10254 of 2013 is filed with following prayers:--

"B To quash and set aside the order dated 20.09.2013 (Exhibit H) passed by the Grievance Committee, in Appeal No. 24 of 2010, by issuing appropriate writ or direction or order in the nature of appropriate writ as the case may be.

C. To hold and declare that Government Resolution dated 13.10.2000 creating quasi-judicial forum under clause 17 is illegal and unconstitutional, and therefore, bad-in-law."

4. Since the subject matter of both the Petitions is same, those are being heard and disposed of by common order.

5. The petitioner in Writ Petition No. 493 of 2014 is respondent No. 1 in Writ Petition No. 10254/2013 filed by Rayat Shikshan Sanstha Karmaveer Samadhi Parisar (For the sake of brevity, hereinafter referred to as "the said Sanstha"), who is respondent No. 3 in Writ Petition No. 493 of 2014.

6. Mr. C.K. Shinde, the learned counsel appearing for the petitioner in Writ Petition No. 493 of 2014 submits that, the petitioner, who is fully qualified and acquired professional qualification i.e. B.Ed. Degree by securing 74% marks, was denied appointment as teacher/Shikshan Sevak by the said Sanstha. It is submitted that, in pursuant to the advertisement issued in the local news paper, the applications were invited and the petitioner did participate in the process for the post of Shikshan Sevaks in the said Sanstha. However, said Sanstha appointed one Smt. Anita Dattatray Mali and Smt. Karuna Manohar Tandel, though they secured less marks compared to the petitioner in M.A. exam and also in B.Ed. exam. It is submitted that, the petitioner secured 74.62% marks in M.A. exam and 74.00% marks in B.Ed. exam and Smt. Anita Dattatray Mali secured 55.00% marks in M.A. exam and 54.40% marks in B.Ed. exam. So also Smt. Karuna Manohar Tandel secured 50.00% marks in M.A. exam and 64.25% marks in B.Ed. exam. However, instead of selecting the petitioner as Shikshan Sevak other two candidates were selected and the said Sanstha appointed them. It is submitted that, being aggrieved by the selection process carried out by the said Sanstha and particularly, the selection of the above said candidates by denying petitioner's legitimate claim of being selected for appointment as Shikshan Sevak, the petitioner preferred Appeal No. 24/2010 before the Grievance Committee in its Camp at Aurangabad. It is submitted that, the Grievance Committee for Entertaining Complaints of Shikshan Sevak, Mumbai Camp at Aurangabad (For the sake of brevity, hereinafter referred to as "the Grievance Committee") after hearing all the concerned allowed the appeal filed by the petitioner, and the said Sanstha was directed to issue appointment order in favour of the present petitioner, if the post is vacant, and if the post is not vacant or not likely to become vacant in near future, then the said Sanstha shall quash and set aside the appointment order in favour of Smt. Anita Dattatrya Mali and issue appointment order in favour of the petitioner. So also the Grievance committee also directed the Deputy Director of Education, Nashik Division, Nashik to grant approval to the appointment of the petitioner, after his appointment by the said Sanstha as Shikshan Sevak. It is submitted that, the constitution of the Grievance Committee was in accordance with the Government Resolution dated 13.10.2000 and therefore, the Committee had jurisdiction to entertain the grievance of the petitioner and after hearing all concerned, the Committee has recorded finding that, the petitioner is more meritorious than other two selected candidates, and therefore, he is entitled for appointment. It is submitted that, even if the directions issued by the Committee are mandatory, nevertheless, the Supreme Court in the case of The Secretary, Sh. A.P.D. Jain

Pathshala and Ors. v. Shivaji Bhagwat More and Ors. 2011(5)All MR 460(S.C.) in para 19 held that, the findings recorded by the Grievance Committee can be considered as recommendation to the Government or its authority, for taking necessary actions or appropriate reports. It is submitted that, in the present case the Deputy Director of Education, Nashik Division, Nashik has accepted the recommendation of the Committee and directed the said Sanstha to give appointment to the petitioner as Shikshan Shevak. Therefore, the learned counsel appearing for the petitioner relying upon the pleadings in the Petition, grounds taken therein and the judgment of the Supreme Court in the case of The Secretary, Sh. A.P.D. Jain Pathshala (supra) submits that, the Petition deserves to be allowed.

7. Mr. V.D. Sapkal, the learned counsel appearing for the said Sanstha relying upon the reply filed before Grievance Committee, pleadings/grounds taken in the Petition by the said Sanstha and all other material placed on record contend that, the Supreme Court in the case of The Secretary, Sh. A.P.D. Jain Pathshala (supra) has considered Government Resolution dated 27.04.2000 and also the subsequent amendment in the said Government Resolution and held that, the constitution of the Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. It is submitted that, constitution of Grievance Committee itself was illegal, and therefore, the Grievance Committee should not have directed the said Sanstha to give appointment to the petitioner. It is submitted that, letter/communication issued by the Director of Education, Nashik Division, Nashik to the Secretary of said Sanstha dated 9/12.12.2013 is worded in such a fashion that, the directions given by the Committee are mandatory in nature, and if those are not followed by the said Sanstha, it would amount to contempt. Therefore, according to the learned counsel, in the first place, the Committee had no jurisdiction to issue any mandatory directions and secondly, the impugned letter/communication by the Deputy Director of Education is also not sustainable in law. The learned counsel invited our attention to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and also pleadings in the Petition and grounds taken therein and submits that, the remedy of the petitioner lies somewhere else and the Grievance Committee had no jurisdiction to pass the mandatory order/directions directing the said Sanstha to give appointment to the petitioner. Therefore, the learned counsel submits that, Writ Petition No. 493/2014 deserves to be dismissed and Writ Petition No. 10254/2013 deserves to be allowed.

8. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner in both the Petitions and the learned counsel appearing for the respective respondents and the learned Additional Government Pleader. With their able assistance, we have gone through the pleadings of the Petitions, the grounds taken therein, relevant provisions of the M.E.P.S. Rules, and the judgment of the Hon'ble Supreme Court in the case of The Secretary, Sh. A.P.D. Jain Pathshala (supra). In Writ Petition No. 493/2014,

the petitioner has placed on record the judgment and order passed by the Grievance Committee in Appeal No. 24/2010 filed by the petitioner. Upon perusal of the discussion in the said judgment, the Committee in para 8 observed that, the Committee has a jurisdiction to entertain and try the appeal filed by the appellant i.e. petitioner in Writ Petition No. 493/2014. It is also observed that, it is pertinent to note the amended G.R. dated 13.10.2000. As per clause 17 of the said Government Resolution as amended on 15th February, 2001, the Grievance Committee has jurisdiction to entertain and try the grievances of Shikshan Sevaks. The clause 17 of the said Government Resolution vests the jurisdiction to entertain and try the grievances of the Shikshan Sevaks with the Grievance Committee. Thereafter Committee proceeded to examine the case of the petitioner and also two other selected candidates namely Smt. Anita Dattatraya Mali and Smt. Karuna Manohar Tandel and reached to the conclusion that, the petitioner is more meritorious, as compared to other two candidates and passed the following order:--

ORDER

"Appeal is allowed.

The respondent No. 1 Rayat Shikshan Sanstha, Satara shall issue appointment order in favour of the applicant Yogesh Vitthal Dane, if the post is vacant as on today.

If the post is not vacant as on today or not likely to become vacant in near future then the respondent No. 1 Rayat Shikshan Sanstha, Satara shall quash and set aside the appointment order in favour of respondent No. 3 Anita Dattatraya Mali and issue appointment order in favour of the appellant.

The Deputy Director of Education, Nashik Division, Nashik shall grant his approval to the appointment of the appellant after the appointment of the appellant is made as a Shikshan Sevak by the respondent No. 1 Rayat Shikshan Sanstha, Satara.

In the facts and the circumstances of this appeal there is no order as to cost."

9. Upon careful perusal of the judgment, it appears that, the Grievance Committee assumed jurisdiction in itself like quasi judicial forum and issued notices to the parties, heard the parties and then issued mandatory directions. Upon careful perusal of the operative part of the order, it is abundantly clear that, not only that the Committee directed the said Sanstha to issue appointment order in favour of petitioner - Yogesh, but in case post is not vacant, further issued mandatory directions to said Sanstha to quash and set aside the appointment order issued in favour of Smt. Anita Dattatraya Mali and issue appointment order in favour of Yogesh. The Committee further directed the Deputy Director of Education, Nashik Division, Nashik to grant approval to the appointment of petitioner - Yogesh after he is appointed as Shikshan Sevak by the said Sanstha. There is no room for doubt that, the directions issued by the

Grievance Committee are mandatory in nature and in pursuant to said directions, the Deputy Director of Education, Nashik Division, Nashik has issued letter/communication dated 09/12.12.2013 to the said Sanstha. The contents of the said letter/communication read thus:--

10. True translated portion of the said letter is as under:--

"O. No. Dy.DE/UM2/Gri.Committee /13-14/24322/21 Office of the Divl. Deputy Director of Education, Nashik Road Nashik, Dated : 09-12/12/2013

To,

The Secretary, Rayat Shikshan Society, Karmaveer Samadhi Parisar Satara Dist. Satara 415 001.

Subject:--Regarding submission of proposal for granting approval and giving appointment to the post of Shikshan Sevak as per the order passed by the "Grievance Redressal Committee for Shikshan Sevak, Aurangabad" in Appeal No. 24/2010 dated 20-09-2013 in favour of Shri. Yogesh Vitthal Dane as a Junior College Shikshan Sevak.

Reference:--1] Decision given by the "Hon. Grievance Redressal Committee for Shikshan Sevak, Aurangabad in Appeal No. 24/2010 on dated 20-09-2013.

2] Approved Note of Hon. Deputy Director of Education, Nashik Division Nashik, dated 03-12-2013.

With reference to the above subject and letters under reference, it is to inform that while taking into consideration the order passed by the Grievance Redressal Committee, Aurangabad in Appeal No. 24/2010 on dated 20-09-2013 the respondent No. 1 i.e. Rayat Educational Society Satara should give appointment to the petitioner - Yogesh Vitthal Dane if the post of his (teaching) subject is vacant. As on today if the post of his (teaching) subject is not found vacant or it shall not be remained vacant in the near future, then, the society by cancelling the appointment order of Respondent No. 3 Anita Dattatraya Mali shall issue appointment order to the applicant Shri. Yogesh Vitthal Dane. These are the orders. The society shall take immediate action by considering the above order of Hon. Grievance Redressal Committee for Shikshan Sevak. Further appointment order may be given to the applicant Yogesh Vitthal Dane in the jurisdiction of that Dy. Director of Education where the proposal of appointment to that effect is required to be submitted immediately to the office of the Dy. Director of Education of that Division where appointment to the said post is required to be given. This will facilitate the office of Deputy Director of Education to approve the appointment of Shri. Dane. Care should be taken that there should be no contempt of the order passed by the Grievance Redressal Committee for Shikshan Sevak else it be noted you would be solely responsible for the same.

Sd/- Deputy Director of Education Nashik Division Nashik.

Copy--for information.

1. Shri. N.B. Bhagwat (President) Shikshan Sevak's Grievance Redressal Committee, Aurangabad.

2. Shri. Yogesh Vitthal Dane, Padhegaon, Tal. Kopargaon, Dist. Ahmednagar"

11. Upon perusal of the contents of the aforementioned letter/communication, it is abundantly clear that, the Deputy Director of Education understood the order passed by the Grievance Committee as mandatory directions and in turn directed the said Sanstha to give appointment to Yogesh and then send the proposal for approval. It is also mentioned that, the said Sanstha should take care that, there should not be contempt of the order passed by the Grievance Committee.

12. Whether the Committee constituted under Government Resolution can issue such directions and ask the said Sanstha to give appointment to petitioner - Yogesh and further directions to the Deputy Director of Education to grant approval can be sustainable, is a question needs to be answered in these Petitions.

13. The Supreme Court in the case of The Secretary, Sh. A.P.D. Jain Pathshala (supra) has considered the Government Resolution dated 27th April, 2000 issued by the Government of Maharashtra. By the said Resolution, the Government of Maharashtra accorded sanction for implementation of the Shikshan Sevak Scheme in all recognized private secondary/higher secondary schools/Junior colleges/B.Ed. colleges, in the State. The said scheme in essence provided for (i) appointment of Shikshan Sevaks for a term of one year on payment of a fixed honorarium, (ii) renewal of such appointment annually, if the work was found to be satisfactory, (iii) absorption of such Shikshan Sevaks into service as teachers on completion of the specified years of service. It provided for constitution of a three member Grievance Redressal Committee (consisting of the concerned Divisional Deputy Director of Education, the Assistant Director and the Education Officer) to consider and decide the grievances relating to selection, appointment, re-appointment or mid-year cancellation of appointment. The scheme provided as follows :

"All the complaints received under the Shikshan Sevak scheme are to be referred to the aforesaid Three member Committee. This committee will hold monthly meetings and render its decision on the complaints and would inform the same to the concerned. An opportunity to put up the case would be given to the complaint."

14. The Supreme Court further considered the directions given by the High Court to the State Government to reconstitute the Grievance Redressal Committee with a retired District Judge as Chairman and the Deputy Director and Education Officer (Secondary) of the concerned region as members. The Supreme Court considered the provisions in the Government Resolution and also directions issued by the Bombay High Court and also further amendment to the said Government Resolution dated 13.10.2000 in pursuant to the directions given by the Bombay High Court. In pursuant to the directions of Bombay High Court, the

State Government has modified the scheme. Clause (17) of the modified scheme implemented the direction of the High Court regarding the re-constitution of the Three Member Committee and provided that, the Committee would function at Mumbai, Aurangabad and Nagpur, the area of jurisdiction of the committees corresponding to the jurisdiction of the benches of High Court at Mumbai, Aurangabad and Nagpur. It further appears that, the Supreme Court adverted to Government Resolution dated 27th July, 2001 issued by the State Government directing that the grievances will be considered by a Single Member Committee consisting of retired Judge (higher level) at Mumbai, Aurangabad and Nagpur by way of circuit bench and resolve the complaints of Shikshan Sevaks. Upon considering the scheme laid down in Government Resolution, referred hereinabove, the Supreme Court in para 10 formulated the following questions for consideration:--

"(i) Whether the High Court can direct the State Government to create a quasi judicial forum; and whether creation of such a forum by an executive order, by the State Government, in pursuance of such a direction, is valid ?

(ii) Whether the High Court could, by a judicial order, exclude the jurisdiction of civil courts to entertain any suits or applications in respect of disputes raised by Shikshan Sevaks?

(iii) Whether the High Court was justified in holding that when the Grievance Committee holds that the order of termination is bad or illegal, it does not amount to ordering reinstatement, but the Shikshan Sevak would as a result continue to be in the employment of the employer ?

(iv) Whether the orders dated 2.5.2008 and 5.8.2008 of the High Court call for interference ?"

15. Upon considering the said questions, in the light of material placed on record, while examining and answering Question No. (i), the Supreme Court in para 17 held thus:--

"17. Neither the Constitution nor any statute empowers a High Court to create or constitute quasi judicial Tribunals for adjudicating disputes. It has no legislative powers. Nor can it direct the executive branch of the State Government to create or constitute quasi judicial Tribunals, otherwise than by legislative Statutes. Therefore, it is not permissible for the High Court to direct the State Government to constitute judicial authorities or Tribunals by executive orders, nor permissible for the State by executive order or resolution create them for adjudication of rights of parties."

The Supreme Court, while examining and answering Question No. (ii), in para 19 held thus:--

"19. Therefore, we hold that constitution of a Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. Secondly, the High

Court cannot in exercise of judicial power interfere with the jurisdiction of the civil courts vested under Code of Civil Procedure. Any such Grievance Committee created by an executive order, either on the direction of the High Court or otherwise, can only be fact finding bodies or recommending bodies which can look into the grievances and make appropriate recommendations to the government or its authorities, for taking necessary actions or appropriate reports to enable judicial Tribunals to render decisions. The Grievance Committee cannot be public quasi-judicial forum nor can its decisions be made final and binding on parties, in disputes relating to Shikshan Sevaks. Therefore, it has to be held that any order or opinion of the Grievance Committee on a complaint or grievance submitted by a Shikshan Sevak were only recommendations to the State Government (Education Department) for taking further action and nothing more."

The Supreme Court, while examining and answering the Question Nos. (iii) and (iv) in para No. 22 held thus:--

"22. Therefore the decision of the committee dated 28.7.2006 is not an enforceable or executable order but only a recommendation that can be made the basis by the Education Department to issue appropriate directions. It is needless to add that persons aggrieved by such directions of the state government will be entitled to challenge such directions either before the civil court or in a writ proceedings."

16. In the present case, upon conjoint reading of prayer clause "B" in Writ Petition No. 493 of 2014, the operative para of the order dated 20.09.2013 passed by the Grievance Committee and the contents of letter dated 9/12.12.2013 addressed to the Deputy Director of Education, Nashik Division, Nashik, it will have to be held that, prayer in the Petition seeks directions for taking coercive action against Respondent No. 3 for failure to comply the order/directions issued by the Respondent No. 2 vide his office communication dated 9/12.12.2013. The discussion in the judgment of the Grievance Committee proceeds on footing that, the Grievance Committee has power of complete adjudication of issue and issue mandatory directions, and directions issued by the Grievance Committee are mandatory in nature. Thus directions unequivocally indicate that, those are in the form of mandatory directions and the contents of the letter dated 9/12.12.2013 addressed to the Deputy Director of Education, Nashik Division, Nashik unambiguously demonstrate that, in case of breach of the directions by the said Sanstha, the said Sanstha would face contempt action. If the prayer of the petitioner, directions issued by the Grievance Committee and the contents of the letter dated 09/12.12.2013 addressed to the Deputy Director of Education, Nashik Division, Nashik are considered, the same can not be implemented and given effect to in the light of conclusion reached by the Supreme Court, as reproduced hereinabove. The Supreme Court held that, constitution of the Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible and secondly, the High Court cannot in exercise of

judicial power interfere with the jurisdiction of the civil courts vested under Code of Civil Procedure. As observed by the Supreme Court, the decision of the Grievance Committee is not enforceable or executable order but only a recommendation, that can be made the basis by the Education Department to issue appropriate directions, and if the persons aggrieved by such directions of the State Government, will be entitled to challenge such directions either before the Civil Court or in a writ proceedings. Therefore, in the light of authoritative pronouncement of the Supreme Court in the case of *The Secretary, Sh. A.P.D. Jain Pathshala (supra)*, the prayer clause "B" in the Petition, the directions issued by the Grievance Committee, and further directions by the Deputy Director to the said Sanstha for implementing directions of the Grievance Committee, as reflected through the letter dated 09/12.12.2013, cannot be given effect and said directions are not legally enforceable. In that view of the matter, we are left with no option but to reject the prayer clause "B" in the Writ Petition. Accordingly Writ Petition No. 493 of 2014 stands dismissed.

17. In the light of discussion in the foregoing paragraphs, we quash and set aside the order dated 20.09.2013 passed by the Grievance Committee in Appeal No. 24 of 2010. Accordingly, the Writ Petition No. 10254 of 2013 is allowed in terms of prayer clause "B".

18. So far prayer clause "C" in the said Petition is concerned, the Supreme Court has considered the very said Government Resolution, and therefore, we do not deem it necessary to adjudicate the said prayer since the said aspect is covered by the judgment of the Supreme Court in the case of *The Secretary, Sh. A.P.D. Jain Pathshala (supra)*.

19. Accordingly, Writ Petition No. 493 of 2014 stands dismissed. Rule stands discharged.

Writ Petition No. 10254 of 2013 is partly allowed in terms of prayer clause "B" and same stands disposed of. Rule made absolute accordingly.